

Order. If no such amended complaint is filed, the report and recommendation recommended that the District Court enter an order dismissing the case and directing the Clerk of Court to mark the case closed. It further recommended that Defendants' Joint Motion to Dismiss pursuant to Rule 12(b)(6) be denied without prejudice, and that Defendants be allowed to renew said motion when Plaintiff files a timely amended complaint.

Service was made on all counsel of record.¹ No objections to the report and recommendation were filed. After review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 16th day of November, 2005,

IT IS HEREBY ORDERED that Defendants' Joint Motion to Dismiss the Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) (Doc. No. 24) is **GRANTED** and the Second Amended Complaint is dismissed without prejudice for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Plaintiff is granted leave to file a Third Amended Complaint setting forth all necessary facts to establish complete diversity jurisdiction within twenty (20) days of the date of this Order. All responses to the Third Amended Complaint shall be filed within twenty (20) days of the date of service of said complaint. If Plaintiff fails to file such amended complaint by the deadline, the Court will *sua sponte* enter an order dismissing the case and directing the Clerk of Court to mark the case closed.

IT IS FURTHER ORDERED that Defendants' Joint Motion to Dismiss pursuant to Rule 12(b)(6) is **DENIED** without prejudice.

¹Service was made on James Israel at the address of record with the Court. However, the mailed copy was returned to the court with the notation "undeliverable as addressed." Attempts to contact Mr. Israel by telephone were also unsuccessful.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lenihan, dated October 27, 2005, is adopted as the opinion of the court.

BY THE COURT:



DAVID STEWART CERCONE
United States District Judge

cc: Honorable Lisa Pupo Lenihan
United States Magistrate Judge

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